

ENTERED

August 02, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

JESUS CERVANDO LOPEZ,
Petitioner,

v.

LORIE DAVIS,¹ Director, Texas
Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

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Civil Action No. 1:15-cv-144

**ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Before the Court is the Magistrate Judge's Report and Recommendation (hereafter "R&R") regarding Jesus Cervando Lopez's Motion for Federal Protection and Stay and Abeyance to Exhaust His State Court Remedies (hereafter "Protection Motion"), Docket No. 12, and Cervando Lopez's 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus (hereafter "§ 2254 Petition"), Docket No. 17. The Magistrate Judge recommended that Cervando Lopez's Protection Motion be denied and his § 2254 Petition be dismissed without prejudice. Docket No. 32 at 15.

On May 5, 2016, Lorie Davis filed an objection to the Magistrate Judge's R&R, arguing that Cervando Lopez's § 2254 Petition should be dismissed *with* prejudice. Docket No. 33 at 2. In support of her objection, Davis lists various negative consequences she believes may follow dismissal

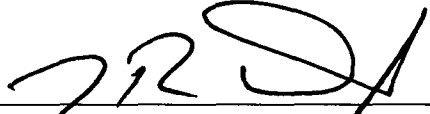
¹ As noted in the Magistrate Judge's R&R, the previously-named Respondent in this action was William Stephens. Effective May 4, 2016, Lorie Davis succeeded Stephens as Director of the Texas Department of Criminal Justice, Correctional Institutions Division. Therefore, pursuant to Fed. R. Civ. P. 25(d), Davis automatically is substituted as a party.

without prejudice, including inadvertently misleading Cervando Lopez into believing he can again seek federal relief on a claim that is procedurally barred, or raise new claims in federal court while avoid the federal statute of limitations period. *Id.*

On May 6, 2016, Cervando Lopez filed a Motion for Extension of Time to File Objections to the Magistrate Judge's R&R, Docket No. 34, which was granted on May 12, 2016, Docket No. 35. No objections were ever filed by Cervando Lopez.

Ultimately, the Court is not persuaded that Davis's concerns warrant dismissal with prejudice. As such, it is **ORDERED, ADJUDGED, and DECREED** that Cervando Lopez's Protection Motion, Docket No. 12, is **DENIED**, and his § 2254 Petition, Docket No. 17, is **DISMISSED** without prejudice.

Signed on this 2nd day of August, 2016.



Rolando Olvera
United States District Judge